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The Supreme Court's decision in *Ricci v. DeStefano* is very good news. The court said clearly and decisively that employment law only rarely permits quotas to remedy racial imbalance.

Most racial preferences -- for example, in college admissions -- are shrouded in secrecy and dishonesty. Not here. In 2003, after 58 whites, 23 blacks and 19 Hispanics took tests to determine who would qualify as captains and lieutenants, no blacks and two Hispanics ended up eligible for promotion. The city's civil service board refused to certify the results, denying promotions to all who had earned them. As the chairman of the New Haven Board of Fire Commissioners had earlier told the firefighters, many of whom were Italian, some men would not be hired because "they just have too many vowels in their name[s]."

Seventeen white candidates and one Hispanic sued, claiming a violation of their legal and constitutional rights. They struck out in the district court and the Second Circuit Court of Appeals.

Judge Janet Bond Arterton, who wrote the district court opinion, cavalierly dispensed with a trial on the facts, issuing instead a summary judgment. In the Second Circuit, Judge Sonia Sotomayor joined two colleagues in a panel decision affirming the district court's decision; the substance of their opinion was confined to one paragraph.

Speaking for a 5-4 majority of the Supreme Court, Justice Anthony Kennedy did acknowledge an internal contradiction in employment discrimination law. Title VII of the 1964 Civil Rights Act prohibited intentional discrimination on the basis of "race, color, religion, sex, or national origin." Yet another law, in 1991 -- which built upon a 1971 Supreme Court decision -- banned employment tests that had a disparate impact on the hiring of racial minorities, unless the tests were shown to be job-related and a business necessity.

But the court said that New Haven had violated Title VII of the 1964 Civil Rights Act. It was not even a close call in the view of the majority.

The Supreme Court has made an elegant start at cleaning up the mess of employment discrimination law, in part by insisting on a critical point. "The purpose of Title VII is to promote hiring on the basis of job qualifications, rather than on the basis of race or color," Justice Kennedy said. The goal was to create a workplace environment free of discrimination, "where race is not a barrier to opportunity." And yet "the City made its employment decision because of race. The city rejected the test results solely because the higher scoring candidates were white."

Justice Samuel Alito's concurring opinion noted that New Haven never made any credible effort to determine whether the firefighters' promotional exam was a legitimate test of job-related skills; the decision to discard the test results was nakedly political. The tests, in fact, had been scrupulously designed and scrubbed of all possible racial bias.

Incredibly, Justice Ruth Bader Ginsburg, writing in dissent, agreed with the willfully blind conclusion of the district court -- which had reasoned that New Haven's assessment "was race-neutral" on the grounds that "all the test results were discarded, no one was promoted." The panel on the Second Circuit effectively agreed with this nonsense.

Yet another Second Circuit judge, José Cabranes, properly posed the broad constitutional question at issue: "Does the Equal Protection Clause prohibit a municipal employer from discarding examination results on the ground that 'too many' applicants of one race received high scores and in the hope that a future test would yield more high-scoring applicants of other races? Does such a practice constitute an unconstitutional racial quota or set-aside?"

Unfortunately, only Supreme Court Justice Antonin Scalia addressed this issue -- and only briefly. "The war between disparate impact and equal protection will be waged sooner or later, and it behooves us to begin thinking about how -- and on what terms -- to make peace between them," he concluded.

All racial classifications are highly suspect under the 14th Amendment. The Constitution protects individuals from discrimination -- without respect to race. Distributing benefits and burdens on the basis of color was supposed to be the ugly mind-set the leaders of the civil rights movement struggled so heroically to change. We have not escaped such race-thinking yet, but this decision is an important step in the right direction.

Here we should listen to Frank Ricci, the lead plaintiff. He appeared at a hearing held by the Civil Service Board before the test results were released. "The people who passed should be promoted," he said. "When your life's on the line, second best may not be good enough." Residents in a burning building want competent firefighters. They don't care about the race of those whose job it is to save them.

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